IN THE HIGH COURT OF UTTARANCHAL,

AT NAINITAL.

A.O. No. 1613/2001
(F.A. No. 1321/1993)

Oriental Fire & General Insurance Co.
(New Oriental Insurance Co. Ltd.)
through its Divisional Manager,
Rajpur Road, Dehradun … Opp. Party/ Appellant.

Vs.

1- Nanak Chand S/o Sukru
R/o Kuvanoo Tehsil Chakrata
District Dehradun(deceased)

1/1. Mrs. Chanda W/o Ram Bahadur D/o
late Nanak Chand,

½ Km. Asha D/o Late Nanak Chand
through her natural guardian Smt. Chanda (sister).
Both R/o KuvanooTehsil Chakrata
District Dehradun.

2. Smt. Noopi W/o late Nanak Chand
R/o R/o Kuvanoo Tehsil Chakrata
District Dehradun (deceased).

2/1. Mrs. Chandra W/o Ram Bahadur
D/o Nanak Chand.

2/2 Km. Asha D/o Nanak Chand, through her
natural guardian Smt. Chanda (sister)
both R/o Kuvanoo Tehsil Chakrata
District Dehradun.

3. Ram Prakash Chawla S/o Salig Ram Chawla,
R/o Sarai Gali, Vikas Nagar, Dehradun
District Dehradun (owner of the vehicle).

4. Bipin Kumar S/o Nanak Chand
R/o Kuvanoo Tehsil Chakrata
District Dehradun.

5. Sunder Singh S/o Nandu
R/o Village Chakmodh, Tehsil Chakrata,
District Dehradun (driver) …….. Respondents.

Sri Prabhat Pandey, learned counsel for the appellant.
Sri L.K. Tewari, learned counsel for the claimants/respondents.

(Hon'ble B.C. Kandpal, J.)

This appeal, U/S 110-D of the Motor Vehicle Act, 1939 read with Section 173 of the Motor Vehicle Act 1988, has been filed by the Oriental Insurance Company against the judgment and award dated 8-10-1993, passed by IIIrd Additional District Judge/Motor

Accident Claim Tribunal, Dehradun, in M.A.C.P. No. 234/1987 Nanak Chand and others vs. Ram Prakash Chawla and others.

2- Brief facts of the case are that on 9-5-1987 at about 6.30 p.m. the deceased Hem Chand aged 13 years, a student of class 5th boarded bus No. ULY 8001 at Jamuva to go to Kuvanoo, Tehsil Chakrata, District Dehradun as a bonafide passenger. The accident in question took place on Vikas Nagar- Kuvanoon road at about 16 kilometer from Isradi towards Kuvanoon. The deceased Hem Chand suffered fatal injuries which resulted into his spontaneous death on the spot. The claimants, as originally impleaded in the claim petition were the parents of the deceased, while the other claimants are the legal heirs of the originally impleaded claimants, who had died during the pendency of the petition. The deceased was the only support of the claimants in their old age. Had the deceased not met with the accident, he would have lived for another 60 years and would have supported the claimants in their old age. Since the deceased belonged to scheduled caste, he would have gone very high in his career within a period of 7 or 8 years and would have started supporting the claimants and would have easily contributed Rs. 200/- per month in the next 30 years. Hence the petition for the compensation of Rs. 74,000/-.

3- The O.Ps.- owner and driver of the vehicle and O.P. Bipin Kumar, under whose management the vehicle was being plied, contested the claim petition by filing W.S. it was alleged that the claimants had no cause of action against them because when the aforesaid bus was cutting a bend on road to Kuvanoo the culvert on the road gave way and the bus fell down in the khud along with the road culvrit, which resulted in the death of the deceased. The accident was an act of God for which no liability can be fastened on the opposite parties.

3- The O.P./ Oriental Insurance Company contested the petition on the ground that the claimants were neither the legal representatives nor the dependents of the alleged deceased. The amount of compensation as claimed in the petition was highly exaggerated and excessive. It was also pleaded that the vehicle in question was

being driven at a very slow speed, cautiously blowing the horn. The vehicle was in a good mechanical condition and its brakes and mechanical system was checked and were found to be in satisfactory state.

4- On the basis of the aforesaid pleading following issues were framed in the claim petition:-

1. Whether the accident was caused due to rash and negligent driving of the driver?.
2. To what relief, if any, the claimants are entitled and from which opposite party?.

5- Both the parties adduced the evidence in support of their cases. The Tribunal, after having considered the evidence on record and hearing the learned counsel for the parties, decreed the claim petition for a sum of Rs. 25,000/-, along with an interest @ 12% per annum from the date of filing of the petition till the date of actual payment. The Tribunal directed the insurance company to pay the amount of compensation.

6- Feeling aggrieved by the aforesaid judgment and award, the Oriental Insurance Company has filed the appeal before the Allahabad High Court, which has been transferred to this court, after creation of new State.

7- I have heard the learned counsel for the parties and perused the record.

8- Learned counsel for the appellant has argued that the short controversy involved in this appeal is that the liability of the insurance company is only upto an extent of Rs.15,000/-, in view of the provisions of Section 95(2)(b) of the Motor Vehicle Act, 1939. It has been submitted by the learned counsel for the appellant that the Tribunal has committed illegality by fixing the entire liability upon the insurance company to pay the amount of compensation.

9- In order to resolve the controversy involved in this case, it would be relevant to peruse the provisions of Section 95 (2) of the M.V.A. 1939, which reads as follows:-

"95. Requirements of policies and limits of liability-

(1) ……..

(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely-

(a) where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousands rupees for each individual passenger;

(c) save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees six thousand in all in respect of damage to any property of a third party."

10- From the perusal of the aforesaid provisions of Section 95 (2) (b) (ii) Motor Vehicle Act, 1939, it is quite clear that the liability of the insurance company for each passenger would be for Rs. 15,000/-.

11- Learned counsel for the respondents has submitted that the insurance company did not establish that the liability of the insurance company was limited upto an extent of Rs. 15,000/- before the

Tribunal concerned. It has also been submitted that the original copy of the policy has not been produced by the insurance company, thereof, the argument advanced by the learned counsel for the appellant is devoid of any merit.

12- I fail to appreciate the argument advanced by the learned counsel for the respondents.

13- The Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. Vs. Nathilal and others;** reported in **1(1999) Accident and Compensation Cases 1 (SC)** has clearly observed that mere fact that the column against unlimited liability not filled, will not lead to inference that liability was unlimited in absence of special premium paid towards that claim.

14- My attention has further been invited by learned counsel for the appellant towards an another decision in the matter of **National Insurance Co. Ltd. Vs. Prasanna Kumar Mitra and others;** reported in **1 (1994) ACC 121 (DB) Orissa High Court,** in which it has been held that the insurer is not required to file the copy of the policy in all cases in order to show that its liability is not unlimited.

15- For the reasons discussed above, I am of the view that the Tribunal has adopted the wrong view for coming to the conclusion that the liability of the insurance company is upto an extent of Rs. 25,000/- along with an interest @ 12% per annum. I come to the conclusion that in view of the specific provisions of the Act the liability of insurance company was upto an extent of Rs. 15,000/-.

16- In view of above, the appeal is liable to be partly allowed.

17- Accordingly the appeal is partly allowed and the impugned judgment and award dated 8-10-1993 is modified upto the extent that the insurer of the offending vehicle, i.e. the Oriental Insurance Company is liable to pay a compensation only upto an extent of Rs.15, 000/- out of the total amount of the compensation awarded by

the Tribunal. It is also made clear that the rest part of the amount would be payable by the owner of the vehicle to the claimants. In case, if the insurance company has deposited the entire amount of compensation with the Tribunal, the insurer will have a recoverable right against the owner of the vehicle.

(B.C. Kandpal, J.)

Dated: 2-12-2006
ISB